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REMARKS

Claims 2 through 4 have been previously canceled. Claims 1, 12, and 20 have been amended. Claims 1 and 5 through 20 remain in the application.

Claims 1 and 5 through 20 were rejected under 35 U.S.C. § 103 as being unpatentable over the prior art cover assembly as disclosed by Applicant in view of Samuel et al. (European Patent No. 0233414) in view of Richmond (U.S. Patent No. 6,095,359). Applicants respectfully traverse this rejection.

In the Background of the Invention section of the present application, a cover is provided for a fuel reservoir and typically has fuel tubes, electrical connector, and rollover valve attached thereto. The Background of the Invention section does not disclose a cover having a base wall, a raised portion extending axially from the base wall, a skirt extending axially from the base wall opposite the raised portion with the base wall extending radially outwardly beyond the skirt and is attached to a fuel tank, and a fuel permeation barrier layer to cover a surface area inside of the skirt to retard permeation of fuel through the cover with the fuel permeation barrier layer being disposed between the base wall and the raised portion within the skirt.

European Patent No. 0233414 to Samuel et al. discloses coated plastic caps. A cap closing a container comprises a vapor permeable body and a coating of a relatively vapor impermeable material which is applied to the cap as a liquid and then cured to form a solid. Samuel et al. does not disclose a cover having a base wall, a raised portion extending axially from the base wall, a skirt extending axially from the base wall opposite the raised portion with the base wall extending radially outwardly beyond the skirt and is attached to a fuel tank, and a fuel permeation barrier layer to cover a surface area inside of the skirt to retard permeation of fuel through the cover with the fuel permeation barrier layer being disposed between the base wall and the raised portion within the skirt.

U.S. Patent No. 6,095,359 to Richmond discloses a molded plastic container closure with fully embedded barrier. This closure 1 includes a molded plastic cap 3 having an end wall 5 and a skirt 7 extending axially around the periphery of the end wall. The inner surface 9 of the skirt 7 is provided with container engagement members such as threads 11. In the embodiment illustrated in FIGS. 1 and 2, this barrier member 13 extends across the end wall 5. As previously mentioned, by fully embedded, it is meant that the barrier member is substantially covered all around by the plastic material from which the cap is molded. The cap 3 with its integral end wall 5 and skirt 7 is co-injected with the barrier member 13. The barrier member 13 is molded of a material which is substantially impermeable to gases such as air and separately nitrogen, oxygen and carbon dioxide. Richmond does not disclose a cover having a base wall, a raised portion extending axially from the base wall, a skirt extending axially from the base wall opposite the raised portion with the base wall extending radially outwardly beyond the skirt and is attached to a fuel tank, and a fuel permeation barrier layer to cover a surface area inside of the skirt to retard permeation of fuel through the cover with the fuel permeation barrier layer being disposed between the base wall and the raised portion within the skirt.

In contradistinction, claim 1, as amended, clarifies the invention claimed as a permeation barrier fuel module cover assembly for a fuel tank of a vehicle including a cover for a fuel module having a base wall, a raised portion extending axially from the base wall, and a skirt extending axially from the base wall opposite the raised portion. The base wall extends radially outwardly beyond the skirt and is attached to the fuel tank. The permeation barrier fuel module cover assembly also includes a fuel permeation barrier layer attached to the cover to cover a surface area inside of the skirt to retard permeation of fuel through the cover with the fuel permeation barrier layer being disposed between the base wall and the raised portion within the

skirt. Claim 12 has been amended similar to claim 1 and includes other features of the present invention.

The United States Court of Appeals for the Federal Circuit (CAFC) has stated in determining the propriety of a rejection under 35 U.S.C. § 103, it is well settled that the obviousness of an invention cannot be established by combining the teachings of the prior art absent some teaching, suggestion or incentive supporting the combination. See In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 227 U.S.P.Q. 657 (Fed. Cir. 1985); ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F.2d 1572, 221 U.S.P.Q. 929 (Fed. Cir. 1984). The law followed by our court of review and the Board of Patent Appeals and Interferences is that “[a] prima facie case of obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art.” In re Rinehart, 531 F.2d 1048, 1051, 189 U.S.P.Q. 143, 147 (C.C.P.A. 1976). See also In re Lalu, 747 F.2d 703, 705, 223 U.S.P.Q. 1257, 1258 (Fed. Cir. 1984) (“In determining whether a case of prima facie obviousness exists, it is necessary to ascertain whether the prior art teachings would appear to be sufficient to one of ordinary skill in the art to suggest making the claimed substitution or other modification.”)

None of the references cited, either alone or in combination with each other, teach or suggest the claimed invention of claims 1 and 12. Specifically, the Background of the Invention section of the present application merely discloses a cover for a fuel reservoir that typically has fuel tubes, electrical connector, and rollover valve attached thereto. The Background of the Invention section lacks a cover having a base wall, a raised portion extending axially from the base wall, a skirt extending axially from the base wall opposite the raised portion with the base wall extending radially outwardly beyond the skirt and is attached to a fuel tank,

and a fuel permeation barrier layer to cover a surface area inside of the skirt to retard permeation of fuel through the cover with the fuel permeation barrier layer being disposed between the base wall and the raised portion within the skirt.

Samuel et al. '414 merely discloses coated plastic caps having a vapor permeable body and a coating of a relatively vapor impermeable material. Samuel et al. '414 lacks a cover having a base wall, a raised portion extending axially from the base wall, a skirt extending axially from the base wall opposite the raised portion with the base wall extending radially outwardly beyond the skirt and is attached to a fuel tank, and a fuel permeation barrier layer to cover a surface area inside of the skirt to retard permeation of fuel through the cover with the fuel permeation barrier layer being disposed between the base wall and the raised portion within the skirt.

Richmond '359 merely discloses a molded plastic container closure with fully embedded barrier in which a barrier member extends across an end wall. Richmond et al. '359 lacks a cover having a base wall, a raised portion extending axially from the base wall, a skirt extending axially from the base wall opposite the raised portion with the base wall extending radially outwardly beyond the skirt and is attached to a fuel tank, and a fuel permeation barrier layer to cover a surface area inside of the skirt to retard permeation of fuel through the cover with the fuel permeation barrier layer being disposed between the base wall and the raised portion within the skirt. There is no motivation in the art to combine the Background of the Invention section cover, Samuel et al. '414, and Richmond '359 together.

The present invention sets forth a unique and non-obvious combination of a permeation barrier fuel module cover assembly that uses a barrier layer, which provides for performance enhancement in permeation of polymer covers used on fuel modules by reducing the surface area through which hydrocarbons can escape. The references, if combinable, fail to teach

or suggest the combination of a permeation barrier fuel module cover assembly including a cover having a base wall, a raised portion extending axially from the base wall, a skirt extending axially from the base wall opposite the raised portion with the base wall extending radially outwardly beyond the skirt and is attached to a fuel tank, and a fuel permeation barrier layer to cover a surface area inside of the skirt to retard permeation of fuel through the cover with the fuel permeation barrier layer being disposed between the base wall and the raised portion within the skirt as claimed by Applicants. The Examiner has failed to establish a case of prima facie obviousness. Therefore, it is respectfully submitted that claims 1 and 12 the claims dependent therefrom are allowable over all of the rejections under 35 U.S.C. § 103.

As to claim 20, claim 20, as amended, clarifies the invention claimed as a fuel tank assembly including a fuel tank having an opening and a fuel module cover covering the opening and having a base wall, a raised portion extending axially from the base wall and radially across the base wall, and a skirt extending axially from the base wall opposite the raised portion. The base wall extends radially outwardly beyond the skirt and is attached to the fuel tank. The permeation barrier fuel module cover assembly also includes a fuel permeation barrier layer molded into the fuel module cover and disposed between the base wall and the raised portion within the skirt to cover a surface area inside of the skirt to retard permeation of fuel through the fuel module cover.

None of the references cited, either alone or in combination with each other, teach or suggest the claimed invention of claim 20. Specifically, the Background of the Invention section of the present application merely discloses a cover for a fuel reservoir that typically has fuel tubes, electrical connector, and rollover valve attached thereto. The Background of the Invention section lacks a fuel tank having an opening and a cover covering the opening and having a base wall, a raised portion extending axially from the base wall, a skirt extending axially

from the base wall opposite the raised portion with the base wall extending radially outwardly beyond the skirt and is attached to a fuel tank, and a fuel permeation barrier layer to cover a surface area inside of the skirt to retard permeation of fuel through the cover with the fuel permeation barrier layer being disposed between the base wall and the raised portion within the skirt.

Samuel et al. '414 merely discloses coated plastic caps having a vapor permeable body and a coating of a relatively vapor impermeable material. Samuel et al. '414 lacks a fuel tank having an opening and a cover covering the opening and having a base wall, a raised portion extending axially from the base wall, a skirt extending axially from the base wall opposite the raised portion with the base wall extending radially outwardly beyond the skirt and is attached to a fuel tank, and a fuel permeation barrier layer to cover a surface area inside of the skirt to retard permeation of fuel through the cover with the fuel permeation barrier layer being disposed between the base wall and the raised portion within the skirt.

Richmond '359 merely discloses a molded plastic container closure with fully embedded barrier in which a barrier member extends across an end wall. Richmond et al. '359 lacks a fuel tank having an opening and a cover covering the opening and having a base wall, a raised portion extending axially from the base wall, a skirt extending axially from the base wall opposite the raised portion with the base wall extending radially outwardly beyond the skirt and is attached to a fuel tank, and a fuel permeation barrier layer to cover a surface area inside of the skirt to retard permeation of fuel through the cover with the fuel permeation barrier layer being disposed between the base wall and the raised portion within the skirt. There is no motivation in the art to combine the Background of the Invention section cover, Samuel et al. '414, and Richmond '359 together.

The present invention sets forth a unique and non-obvious combination of a permeation barrier fuel module cover assembly that uses a barrier layer, which provides for performance enhancement in permeation of polymer covers used on fuel modules by reducing the surface area through which hydrocarbons can escape. The references, if combinable, fail to teach or suggest the combination of a fuel tank assembly including a fuel tank having an opening and a cover covering the opening and having a base wall, a raised portion extending axially from the base wall, a skirt extending axially from the base wall opposite the raised portion with the base wall extending radially outwardly beyond the skirt and is attached to a fuel tank, and a fuel permeation barrier layer to cover a surface area inside of the skirt to retard permeation of fuel through the cover with the fuel permeation barrier layer being disposed between the base wall and the raised portion within the skirt as claimed by Applicants.

Further, the CAFC has held that “[t]he mere fact that prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification”. In re Gordon, 733 F.2d 900, 902, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984). The Examiner has failed to show how the prior art suggested the desirability of modification to achieve Applicants’ invention. The Examiner has failed to establish a case of prima facie obviousness. Therefore, it is respectfully submitted that claim 20 is allowable over the rejections under 35 U.S.C. § 103.

Obviousness under § 103 is a legal conclusion based on factual evidence (In re Fine, 837 F.2d 1071, 1073, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988), and the subjective opinion of the Examiner as to what is or is not obvious, without evidence in support thereof, does not suffice. Since the Examiner has not provided a sufficient factual basis, which is supportive of his/her position (see In re Warner, 379 F.2d 1011, 1017, 154 U.S.P.Q. 173, 178 (C.C.P.A. 1967), cert. denied, 389 U.S. 1057 (1968)), the rejection of claims 1 and 5 through 20 is improper.

Therefore, it is respectfully submitted that claims 1 and 5 through 20 are allowable over the rejection under 35 U.S.C. § 103.

Based on the above, it is respectfully submitted that the claims are in a condition for allowance, which allowance is solicited.

Respectfully submitted,

By: 

Daniel H. Bliss

Reg. No. 32,398

Delphi Technologies, Inc.
Legal Staff – Intellectual Property
M/C 480-410-202
P.O. Box 5052
Troy, Michigan 48007
(248) 813-1240

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